

convenience and to pay any costs involved in the termination,¹ Appellant noted an appeal with this Board on March 26, 1986. By letter dated November 24, 1986, DNR rescinded the termination for default and terminated Appellant's contract for convenience on grounds that the default termination was inappropriate as a matter of law. However, DNR continued its refusal to consider Appellant's claim for costs under the termination for convenience clause.

5. An Itemized breakdown of Appellant's claim of \$158,795.09, reflective of evidence adduced at the hearing, is as follows:

<u>Description</u>	<u>Itemized Cost</u>	<u>Date of Acquisition, Installation or Construction</u>	<u>Total Cost</u>
A. INCUBATORS (capacity: 42,000 eggs)			
Simmons - (2) Incubators	\$10,000.00	2/20/85	
KL Products - Parts	373.53	6/3/85	
Freight	1,668.00	2/25/85	
TOTAL INCUBATORS			\$12,041.53
B. HATCHER (capacity: 10,000 eggs)			
Simmons	\$ 3,500.00	2/20/85	
TOTAL HATCHERS			\$ 3,500.00
C. EGG WASHER (18,000 eggs/hour - 50 case)			
Kaufman's	\$ 7,500.00	3/4/85	
Repair to Egg Washer	986.00	3/30/85	
TOTAL EGG WASHER			\$ 8,486.00
D. EGG COOLING ROOM			
All Temp Spray Insulation	\$ 209.55	4/5/85	
TOTAL EGG COOLING ROOM			\$ 209.55
E. HOT WATER HEATER (100 gallons)			
Slaughter's	\$ 215.00	5/4/85	
TOTAL HOT WATER HEATER			\$ 215.00
F. PUMPS (20-80 gallons/minute)			
Slaughter's Inv. #71836	\$ 299.00	5/4/85	
Slaughter's Inv. #71036	21.80	5/17/85	
W.W. Grainger Inv. #015316	108.49	6/17/85	
W.W. Grainger Inv. #013170	9.38	5/23/85	
TOTAL PUMPS			\$ 438.67
G. PLUMBING SUPPLIES			
Slaughter's	\$ 54.08	4/5 & 4/24/85	
Pete Parizzi, Inc.	2,410.71	3/25 to 8/1/85	
TOTAL PLUMBING SUPPLIES			\$ 2,464.79
H. BACK UP ELECTRICAL SYSTEM			
Kaufman's	\$ 3,000.00	4/4/85	
D. Painter - Motor Repair	500.00	4/1/85	
			\$ 3,500.00

¹See the final decision of the procurement officer (dated March 11, 1986). Agency Appeal File, Tab A.

I.	NEW WELL (4" well)			
	Robbins Bros.	\$ 4,900.00	5/16/85	
	TOTAL WELL			\$ 4,900.00
J.	LUMBER (Pens, Buildings & Brooder Rooms)			
	Smicks Lumber	\$12,549.71	3/10 to 11/30/85	
	Deepwater Lumber	505.02	5/20 to 8/16/85	
	TOTAL LUMBER			\$13,054.73
K.	ELECTRIC HOOK UP & SUPPLIES			
	Tomasetti Electric	\$ 1,995.49	3/20 to 6/11/85	
	Serv U. Electric	112.32	3/29 to 6/14/85	
	TOTAL ELECTRIC			\$ 2,107.81
L.	CONCRETE			
	Clemente Transit Mix, Inc.	\$ 4,896.98	3/19 to 5/10/85	
	TOTAL CONCRETE			\$ 4,896.98
M.	CRATES			
	600 at \$15.00 each	\$ 9,000.00	7/15/85	
	TOTAL CRATES			\$ 9,000.00
N.	BROODERS, FEEDERS & TRAYS			
	Kuhl Corporation	\$ 4,102.60	3/28 to 5/10/85	
	Lands Sheet Metal	256.50	4/29/85	
	E. J. Deseta Co.	393.00	5/7/85	
	TOTAL BROODERS, FEEDERS & TRAYS			\$ 4,752.10
O.	HARDWARE			
	Shimp's Hardware	\$ 1,339.33	4/2 to 11/5/85	
	TOTAL HARDWARE			\$ 1,339.33
P.	PENS			
	Fence - Agway	\$ 152.16	7/16/85	
	Wire - Southern States	1,311.00	7/12 to 7/18/85	
	Wire - Sherwatt, Inc.	1,872.00	5/23 to 6/11/85	
	Fans - Ventilation/			
	Grainger	751.87	5/29/85	
	Staples - Stark	428.84	6/6/85	
	Staples - Ciessel	197.79	12/10/84	
	All Temp Insulation	1,604.35	4/18/85	
	Netting - Enduranet	1,139.96	9/12 to 10/7/85	
	TOTAL PENS			\$ 7,457.97
Q.	GRAIN WAGON			
	Leslie Fogg	\$ 3,600.00	6/24/85	
	TOTAL GRAIN WAGON			\$ 3,600.00
R.	LABOR	\$28,475.91		
	TOTAL LABOR			\$28,475.91
S.	BREEDERS HELD FOR 2ND YEAR OF CONTRACT			
	5,288 Breeders held from Aug. 22, 1985 to Dec. 21, 1985			
	Cost of ducks for breeders			
	5,288 at \$6.50/duck	\$34,372.00		

Feed at \$.02/day/duck	12,902.72
Labor	<u>1,080.00</u>

TOTAL COST - BREEDERS

\$48,354.72

TOTAL

\$158,795.09

6. The record clearly indicates that (1) Appellant in fact made the various purchases and received the various services listed in this breakdown on the dates indicated; (2) these costs were incurred in connection with performance of the contract; (3) the amounts paid for these items and services were reasonable; and (4) with certain exceptions the various items of equipment and additions to Appellant's physical plant necessitated by the contract had minimal resale value or useful life beyond the performance of the instant contract. (Appellant's Exhibits 1-40; Tr. 8-215).² A discussion of these various purchases, services and related costs follows.

7. The purchased equipment was shopped in trade journals, by word of mouth, and through catalogs. The two incubators and one hatcher were purchased used from a hatchery (Simmons) in Missouri at reasonable prices. The expenditures related to the incubators (\$12,041.53) and hatcher (\$3,500.00) were costs attributable to this contract necessitated by the increase in capacity to fulfill the requirements of the contract. See Exhibits 1-3.

8. Appellant was also able to purchase a used egg washer for \$7,500.00 from a poultry concern which, including the cost of repair (\$986.00) to make it operational, was a reasonable cost and necessary for performance of the contract. See Exhibits 4 and 5.

9. Because an entire crop of eggs, while in the incubators or hatcheries, could be lost if electrical power failed, even for a relatively short period of time, successful contract performance necessitated the acquisition of a backup electrical power system. Appellant purchased a used generator for \$3,000.00 (Exhibit 14), which required repairs (\$500.00). The incubators and egg washer also required a hot water heater which was purchased for \$215.00 (Exhibit 7). These items, along with the other electrical equipment, required hook-up services and electrical supplies (Exhibits 18 and 19) costing \$2,107.81. We find these costs related to a backup electrical power system to be reasonable.

10. Appellant was required to undertake certain building improvements in order to perform the contract. New pens (see, e.g., Exhibits 36 and 37), buildings and brooder rooms were required to be constructed in order to accommodate the increased volume of business. In addition to \$13,054.73 for lumber (Exhibits 16 and 17); \$1,339.33 for hardware (Exhibit 24); \$7,457.97 for fencing, wire, fans, staples, insulation, netting (Exhibits 25-32); \$2,464.79 for plumbing supplies (Exhibits 12 and 13); and \$209.55 for insulation purchased as part of the construction of a new cooling room (Exhibit 6),³ a great deal of concrete had to be delivered and poured for these purposes. This concrete, costing \$4,896.98, was used for the new construction and included flooring, water troughs in the new brooder rooms, a concrete floor in a barn, a slab for the new generator and surrounding enclosure, and related structures (Exhibit 20).

11. There was also an increased need for water in Appellant's business, requiring the digging of a new four-inch well costing \$4,900.00 (Exhibit 15), and the installation of several pumps at a total cost of \$438.87 (Exhibits 8-11) to help the flow of outside water in the natural ponds to accommodate the increased number of ducks.

²All exhibit references are to Appellant's exhibits. In addition to the exhibits, Appellant's case included the testimony of Appellant's president Mrs. Philomena Matarese, and her son Anthony, Appellant's business manager. DNR's challenge to Appellant's case consisted of cross-examination of Appellant's witnesses. The only evidence introduced by DNR was in the form of the testimony of Mr. Joe Lawing, an expert in the pricing of hatchery equipment. The essence of Mr. Lawing's testimony was that he would not have paid as much for various items of equipment (incubators, hatcher, egg washer and grain wagon) discussed below. However, his testimony fails to establish that the cost of any of these various items was unreasonable.

³Although a pre-existing cooling room was leveled to permit the construction of the new facility necessitated by the contract, the original cooling system itself was incorporated into the new structure.

12. In order to raise and feed the increased number of ducks, Appellant had to acquire additional brooders, feeders and trays. Many of the trays were made to specification, since ready-made material of this nature is not designed for ducks. See Exhibits 21-23. The cost of these items was \$4,752.10.⁴ A grain wagon (Exhibit 40) was purchased for \$3,600.00 to handle the increased volume. This simultaneously permitted decreased human contact with the ducklings which was necessary to insure that they were "environmentally conditioned."

13. Although it had some crates for its existing business for the shipment of ducks, additional crates were needed to handle the DNR contract. Appellant purchased 600 used crates at \$15.00 each for a total cost of \$9,000.00. The contract envisioned the shipment to DNR of 6,000 ducks at a time. Testimony reflected that 12 ducks were shipped per crate, thus necessitating 500 crates on each trip. While Appellant urges that we take into account ordinary breakage and loss over the life of the contract and find that the purchase of 600 crates was reasonable, we decline to do so in view of the conflicting testimony on this one item between Mrs. Matarese and her son. (Compare Tr. 58 with Tr. 186-187). Since we find that only 500 crates were necessary for performance of this contract, we reduce Appellant's claim by \$1,500.00 (100 crates x \$15.00 per crate = \$1,500.00).

14. Total labor costs, exclusive of benefits, maintenance, and expenses, expended in preparation for and execution of the contract amounted to \$28,475.91. (Tr. 79-85, 187). This figure was derived from Appellant's payroll records for the period April 1, 1985 to August 19, 1985 and was calculated for thirteen people who worked on the DNR contract. Seventy-five (75) percent of their total salary amount was allocated to the DNR contract as representing the amount of their total work time spent on the DNR contract during the period April 1, 1985 when contract performance commenced to August 19, 1985 when the last delivery of ducks was made for the first contract year. This labor cost testimony was uncontradicted.

15. Uncontradicted testimony was also presented by Appellant with respect to the setting aside of breeding ducks for the second year of the contract. Using the period August 22, 1985 (three days after the last ducks for 1985 were delivered) through December 21, 1985 (the date of the DNR termination letter), the cost of breeding ducks, number of breeding ducks, required feed and attendant labor were explained. Testimony reflected that original projections were based upon 4,288 ducks to fulfill second year requirements. However, this figure erroneously only represented the hens necessary to fulfill the second year of the contract and failed to include a certain number of drakes necessary for mating. Mr. Matarese testified that one drake would be necessary for every 3.5 - 4.0 hens. Thus, using a number less than the fertility ratio of 1 to 3 1/2 or 1 to 4, Appellant added 1,000 drakes to the original projection of hens yielding a total of 5,288 ducks. We accept Appellant's testimony that a duck cost \$6.50 (as compared with \$8.50 to \$15.00 per duck on the market) and this cost times 5,288 ducks yields \$34,372.00. Feed at \$.02 per day per duck during the period in question cost another \$12,902.72, and labor required for that feeding and maintenance amounted to \$1,080.00. The total cost attributable to the setting aside of breeders for the second year of the contract thus amounts to \$48,354.72; and we find this cost to have been reasonably incurred in fulfillment by Appellant of its DNR contract obligations.

16. Based on the evidence of record, Appellant's aggregate cost for the items of equipment and additional facilities set forth in paragraphs 7, 8, 10 and 12 (\$60,816.69) should be reduced by 10% (\$6,081.69) to reflect minimal (approximately 10%) use of these items of equipment and facilities by Appellant in connection with its other business and contracts subsequent to the termination of the instant contract. The aggregate cost of the items of equipment listed in paragraph 7, 8, and 12 (grain wagon only) (\$26,641.53) should likewise be reduced by 10% (\$2,664.15) to reflect credit for the minimal resale value, attributable to these items. Thus, Appellant's claimed costs must be reduced by a total of \$8,745.84.

17. In summary, we find that Appellant's claimed costs of \$158,795.09 should be reduced to \$148,549.25 [\$158,795.09 minus the sum of \$1,500.00 (crates) and \$8,745.84 (equipment and plant reductions)] as reflecting Appellant's reasonable costs incurred.

⁴With respect to an invoice from Kuhl Corporation in this category, the original claim was modified downward by the deletion of charges for certain detergent, powder and wicks, totaling \$201.50. See Exhibit 21.

Decision

Appellant claims it is entitled under the termination for convenience clause of the contract to all the above itemized costs in the claimed amount of \$158,795.09. The language of the termination for convenience clause of the contract resembles the clause set forth in COMAR 21.07.04.14 for purchase orders over \$7,500. It provides:

"The State may terminate this Contract, in whole or in part, without showing cause upon giving thirty (30) days written notice to the Contractor. The State shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination."

DNR argues that under the termination for convenience clause a contractor may never recover more than the total dollar amount of the contract and that any amounts already paid under the contract prior to termination should be credited against the amount of costs the contractor may recover. Since Appellant was paid \$69,900.00 under the contract prior to termination, DNR asserts that the maximum Appellant is entitled to recover is \$88,895.09 (\$158,795.09 total cost incurred minus \$69,900.00 payment under the contract). Appellant argues that no such limiting language appears in the termination for convenience clause of its contract nor should any be inferred to defeat its claim for total costs incurred in the itemized amount of \$158,795.09. Note that the Board has found that the total reasonable costs incurred were \$148,549.25.

We determine that a contractor may not recover costs upon a termination of its contract for convenience that would result in the State, with limited exception not applicable here, paying the contractor more than it would have been paid⁵ had the contract not been terminated.⁶ The applicable principle is that a contractor is entitled to its reasonable costs but may not reasonably receive more than the contract price with appropriate adjustments to include amounts already paid.⁷

Under Appellant's literal construction of the clause in its contract, it contends that if it had been paid for all work under the contract save for a one dollar item when its contract was terminated for convenience it should still be awarded all of its costs incurred in performance of the contract over the three year term less any cost savings in not having to perform the one dollar item. Such a result, where virtually the entire price bid becomes profit, is unreasonable. Contracts should be interpreted in a way which makes them fair and reasonable in preference to an interpretation which leads to harsh or unreasonable results. Canaras v. Lift Truck Services, Inc., 272 Md. 337, 357 (1974).

In summary, we reject Appellant's argument that it is entitled to all its costs plus the contract amount already paid. Rather, Appellant is entitled to recoup only its reasonable costs as reduced by the amount already paid under the contract. Appellant thus is entitled to \$78,649.25 (\$148,549.25, total reasonable costs incurred minus \$69,900.00 payment under the contract) as compensation for the reasonable costs flowing from the termination of its contract for convenience.

DNR asserts, however, that Appellant would have lost money on the contract and that the Board should reduce the amount of the adjustment to reflect this loss. See Reese Industries, ASBCA No. 29029, 86-2 BCA ¶18,962. On the other hand, Appellant has not requested an amount as profit on its reasonable costs incurred.

⁵Money a contractor would have been paid under a contract awarded through competitive sealed bidding would include the price bid plus any additional amount added to the price bid by change order, contract modification, or equitable adjustment.

⁶While acknowledging that it is not entitled to anticipatory profit, Appellant, nevertheless, seeks by virtue of this appeal and previous payment on the contract, a total compensation of \$228,695.09 (\$158,795.09 + \$69,900.00); an amount \$20,195.09 in excess of the contract price as established by its bid, there being no increases in the contract price up to the date of termination.

⁷This principle we apply may be favorably compared with its specific expression in the so called "long form" termination for convenience clause for construction contracts set forth in COMAR 21.07.02.08 (see Appendix A) and the "long form" termination for convenience clause for service and supply contracts set forth in COMAR 21.07.03.02B (see Appendix B).

The record established by the parties in this case does not allow precise calculation concerning profit that may have been factored into Appellant's bid on the work performed. Similarly, DNR failed to show, nor can we conclude from the record established, that Appellant in fact would have lost money in performance of the remainder of the contract, even with the rather significant costs Appellant incurred up to the date of termination relative to the amount of its bid. Accordingly, the equitable adjustment allowing Appellant its reasonable costs is made without any adjustment for profit or loss.

Appellant additionally seeks predecision and post decision interest at the rate of 10% from December 21, 1985, the date its contract was terminated.⁸ We believe that the record demonstrates that Appellant should be awarded predecision interest to be appropriately compensated. However, we do not believe that interest should accrue as requested from December 21, 1985. In determining when interest should begin to run, the Board consistently has attempted to ascertain when the State was in an adequate position to know the details of the claim and the extent of the equitable adjustment being requested. From this point, there is added a reasonable period for review and payment of the claim, thus establishing a date when interest should begin to accrue should payment not be made.⁹ Standard Mechanical Contractors of Maryland, Inc., MSBCA 1145, 1165, 2 MICPEL ¶127 at p. 30 (1986); Reliable Janitor Service, MSBCA 1247, 2 MICPEL ¶122 at p. 6 (1986). Granite Construction Company, MDOT 1014, 1 MICPEL ¶66 at pp. 40-41 (1983). See Md. Port Adm. v. C.J. Langenfelder & S., 50 Md. App. 525, 537-545 (1982). Correspondence in the Agency Appeal file reflects that Appellant protested the DNR decision to terminate its contract (then a termination for default) by letter dated January 23, 1986 and that the parties engaged in significant dialogue concerning the appropriateness of the default termination. Further correspondence in the Agency Appeal file reflects that Appellant submitted an itemized claim by February 20, 1986. Recognizing that the termination for default was constructively converted into a termination for convenience effective December 21, 1985, since it was legally inappropriate to have terminated Appellant's contract for default, we determine based on the record that by April 1, 1986, DNR should have been able to have reviewed, assessed and paid Appellant's claim. Thus predecision interest is to accrue from April 1, 1986.

With respect to the period April 1, 1986 to June 30, 1986 we note that the legal rate of 6% interest is applicable.¹⁰ We recognize that the underlying object of an equitable adjustment is to make a contractor whole, to safeguard him against increased costs engendered by the State's action, including interest on borrowed funds or the loss of income on the contractor's own capital. We also recognize that as nearly as possible, such recompense should be actual and not necessarily by reference to an artificial rate that may have little relevance to the contractor's actual cost of money or loss of income on investment. See Md. Port Adm. v. C.J. Langenfelder & S., *supra*, 50 Md. App. at p. 544.

However, Appellant has offered no evidence that the 6% legal rate is insufficient to adequately compensate it regarding its particular circumstances during the period April 1, 1986 to June 30, 1986, nor has it argued that such rate is otherwise unreasonable. See Standard Mechanical Contractors of Maryland, Inc., *supra*. Accordingly, we conclude that predecision interest be awarded at the rate of 6% per annum for the period April 1, 1986 to June 30, 1986 and at the rate of 10% per annum for the period July 1, 1986 to the date of this decision. Such interest calculations shall be based on the amount of \$78,649.25 that we have found Appellant to be entitled to. See §17-201(d)(2), Division II, State Finance and Procurement Article, Code *supra*.

Post decision interest is likewise payable on the amount of \$78,649.25 from the date of this decision at the rate of 10% per annum. See §17-203(c), Division II, State Finance and Procurement Article, Code *supra*.

Appellant's appeal is sustained to the foregoing extent.

⁸Award of interest is discretionary with the Board and effective July 1, 1986 is at the rate (10%) specified in §11-107(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. Section 17-201(d), Division II, State Finance and Procurement Article, Code *supra*.

⁹Pursuant to the provisions of §17-201(d), *supra*, interest may not accrue prior to the receipt of a claim by the procurement officer.

¹⁰See Footnote 8, *supra* and Md. Port Adm. v. C. J. Langenfelder, *supra*, 50 Md. App. at pp. 543-544.

Appendix A

Termination for Convenience Clause
- Construction Contracts

COMAR 21.07.02

.08 Termination for Convenience Clause (Article 21, §3-602(a)(1)) [State Finance and Procurement Article, §13-602(a)(1).]

The clause set forth in this regulation is required to be included in all State construction contracts:

"Termination for Convenience of the State

* * *

"(4) . . . the contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this paragraph.

"(5) In the event of the failure of the Contractor and the procurement officer to agree, as provided in paragraph (4), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4).

(a) With respect to all contract work performed before the effective date of the Notice of Termination, the total (without duplication of any items) of:

(i) The cost of the work;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (2)(e) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (i) above; and

(iii) A sum, as profit on (i) above, determined by the procurement officer, to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(b) The reasonable cost of the preservation and protection of property, incurred pursuant to paragraph (2)(i); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (a) above, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. . . .

* * *

"(8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments or account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.

Appendix B

Termination for Convenience Clause,
Service and Supply Contracts

COMAR 21.07.03.02:

B. Alternate Clause - Termination for Convenience (long form)

"Termination for Convenience of the State

* * *

"(4) . . . the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, may not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated, the contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (4).

"(5) In the event of the failure of the Contractor and the procurement officer to agree . . . upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows . . .

* * *

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto . . . and

* * *

(iii) a sum, as profit on (i) above, determined by the procurement officer, in effect as of the date of execution of this contract had it been completed. No profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; . . .

* * *

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated.

...